COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

COMPLAINT OF CTC COMMUNICATIONS CORP. CONCERNING REFUSAL BY VERIZON MASSACHUSETTS TO PROVIDE UNBUNDLED NETWORK ELEMENTS AT TARIFFED RATES	)	D.T.E. 04-87

OPPOSITION OF VERIZON MASSACHUSETTS TO MOTION FOR RECONSIDERATION

I. INTRODUCTION

The Motion for Reconsideration filed by CTC on March 22, 2005 ("Motion"), is without merit and simply another attempt by CTC to prolong its unbundled access to enterprise switching services at TELRIC rates despite the FCC's ruling in the *Triennial Review Order* – issued more than 18 months ago – that CLECs are not impaired without such access. The Department should, accordingly, deny the motion and affirm its Dismissal Order of March 3, 2005, dismissing this proceeding.

The Department's Dismissal Order was legally and factually correct and was not the result of any mistake or inadvertence. CTC's Motion does not argue that the Dismissal Order was improper based on the theory of recovery stated in the Complaint and the relief sought therein. Rather, the Motion improperly seeks to assert a new theory of recovery, nowhere raised in the Complaint, and asks for new relief, also not requested in the Complaint. The Motion argues that the Dismissal Order was incorrect in light of this new theory. In the Complaint, CTC claimed that it was entitled to purchase UNE-P

out of Verizon Massachusetts' ("Verizon MA") then-current, Section 251 UNE tariff, Tariff DTE No. 17 (*see* Complaint ¶¶13, 14). The Complaint asked for, among other things, an order requiring Verizon "to continue to provide Unbundled Network Elements to CTC at the rates, terms and conditions set forth in Tariff DTE No. 17." *Id*. Prayer for Relief ¶(a). CTC also argued that Verizon MA could not assess a surcharge on CTC's former enterprise UNE-P arrangements without first tariffing such charges and submitting a cost study pursuant to state law. *See id*. ¶24.

Presumably because the Department has allowed Verizon MA to remove unbundled enterprise switching (including switching subject to the FCC's four-line carve-out) from Tariff DTE No. 17,[1] CTC no longer seeks relief in this proceeding under Tariff DTE No. 17. Rather, the Motion now asserts that Verizon MA is "offering" a new enterprise switching service pursuant to *Section 271* of the 1996 Act at a common rate available to all comers, *i.e*. at common carriage, and therefore must tariff that offering. *See* Motion, Argument "A," at 10. CTC has also purportedly revised its Prayer for Relief (without seeking leave of the Department) to delete reference to Tariff No. 17 and add a request for an order directing Verizon MA "to file tariff provisions including proposed terms and rates for its UNE-P replacement services that it seeks to impose on CLECs in Massachusetts." *Id*. at 14.

[1] *See, Consolidated Order Dismissing Triennial Review Order Investigation and Vacating Suspension of Tariff M.D.T.E. No. 17*, entered in D.T.E. Nos. 03-60 and 04-73 on December 15, 2004, at 72, 74 (the "Consolidated Order"), at 22.

CTC's new theory of recovery has no merit. CTC deliberately confuses Verizon MA's willingness to provide enterprise switching service under Section 271 (which it will provide solely through individually-negotiated contracts based on the particular circumstances, needs and requirements of each requesting carrier) with Verizon's notice that if CTC failed to migrate its former enterprise UNE-P arrangements to alternative services by August 22, 2004, then Verizon would add a surcharge to CTC's bill to bring its rates up to the resale level (rather than disconnect those services, as Verizon has a right to do). CTC contends that this notice was an offer of a new common carrier service that must be tariffed pursuant to Section 271. CTC's theory has nothing to do with the facts. The surcharge that Verizon MA applied to enterprise switching arrangements was not an "offer" for a "new service" that will be available to all CLECs, let alone a Section 271 offering. It was, instead, a voluntary accommodation for CLECs that failed to make any arrangements to transition their de-listed enterprise switching to other, lawful options, such as resale or commercial arrangements. Verizon MA was (and remains) free not to make this accommodation, and need not tariff it. Moreover, contrary to CTC's claim, Verizon MA is providing Section 271 switching services through individually-negotiated contracts with CLECs. Thus, even under the Department's precedent,[2] Verizon MA need not tariff such services. Accordingly, CTC cannot prevail on its claim

[2] Verizon MA has demonstrated in its Answer, at 9-10, and in other proceedings that the FCC has exclusive authority to enforce Verizon MA's Section 271 obligations. In the *Consolidated Order*, however, the Department ruled (incorrectly) that it may nevertheless require Verizon MA to tariff services offered solely pursuant to Section 271 where those services are offered as common carriage, instead of through individually negotiated arrangements. *Consolidated Order* at 71. *See also*, *Order Denying Motion of Verizon Massachusetts for Partial Reconsideration*, entered in D.T.E. 03-59-B on December 15, 2004, at 9 (no tariff required where service is offered through individually negotiated contracts).

as a matter of law. CTC's particular arguments as to mistake and error are likewise fatally flawed, for the reasons discussed below. The Department should deny the Motion.

II. BACKGROUND

In the *Triennial Review Order*, the FCC found that CLECs are not impaired without access to unbundled local circuit switching or associated unbundled shared transport, used to serve enterprise customers. *TRO* ¶ 497. The FCC also reaffirmed that in "density zone 1 of the top 50 MSAs" (Metropolitan Statistical Areas), the proper dividing line between mass-market and enterprise customers "will be four lines," and, therefore, retained the "four-line carve-out" it first adopted in its 1999 *UNE Remand Order*. *Id*. ¶¶ 497, 525. The FCC issued rules declaring that "an incumbent LEC *shall comply* with the four-line 'carve-out' for unbundled switching established in" the *UNE Remand Order*. 47 C.F.R. § 51.319(d)(3)(ii) (emphasis added).

In order to effectuate the *TRO* rulings, Verizon sent letters on May 18, 2004, to its CLEC UNE customers in the state, including CTC, providing more than 90 days' notice that, as of August 22, 2004, Verizon MA would no longer provide enterprise switching or associated, unbundled shared transport as UNEs under Section 251. *See* letters from Jeffrey A. Masoner of Verizon to Edward W. Kirsch dated May 18, 2004, attached to the Complaint as Exhibits 1 and 3. Verizon voluntarily gave CTC this extended notice, even though CTC is not entitled to *any* advance notice of discontinuance of de-listed UNEs under its interconnection agreement with Verizon MA. *See* Section 1.1 of the UNE Remand Attachment to Amendment 1 of the ICA.[3]

[3] Excerpts from the ICA and Amendment No. 1 cited herein are attached to Verizon's Answer.

Verizon's May 18 letters also advised CTC that, although enterprise switching would no longer be available after August 22, 2004, CTC could still obtain switching services from Verizon in one of three ways. First, Verizon stated that it would continue to make enterprise level services available on a resale basis. Second, Verizon stated that it was "prepared to enter into commercial negotiations for alternative service arrangements that may offer certain advantages over resale…." *See* letter from Jeffrey A. Masoner to Edward W. Kirsch dated May 18, 2004, attached Exhibit 1 to the Complaint, at 2.

Verizon correctly anticipated that some CLECs would either neglect or refuse to migrate their discontinued UNE arrangements to resale or to enter into commercial negotiations.[4] CTC was one of these carriers. Although Verizon would have been entitled to simply cut off service to CTC and other CLECs that made no affirmative choice for a replacement services, Verizon chose instead to avoid any interruptions of existing end-user service by providing a third alternative:

> Should your company fail to migrate its Enterprise UNE-P arrangements to an alternative service on or before [the cutoff] date, Verizon will begin billing any Enterprise UNE-P arrangements that remain in place after August 22, 2004 at a rate equivalent to the Section 251(c)(4) resale rate for business service … in order to avoid service disruption. The new rate will be effected by means of a surcharge that will be added to the applicable Enterprise UNE-P rates. Additional information about this surcharge will be provided in the near future. If your company prefers not to pay the resale equivalent rates, your company may of course terminate any affected UNE-P service arrangements through existing disconnect processes.[5]

---

[4] Several CLECs did take the opportunity to negotiate such agreements.

[5] *Id.*, *see also*, May 18, 2004, letter from Masoner to Kirsch, Complaint Exhibit 3, concerning four-line carve out UNE-P and including substantially similar statements.

In follow-up letters, Verizon provided CTC with the actual amounts that would be assessed as surcharges and a list of the central offices affected by the FCC's four-line carve-out rule. *See* Exhibits 2 and 4 to the Complaint. The surcharges were designed to bring the total charges for a CLEC's bill for its former enterprise UNE-P arrangements up to the level of Verizon MA's resale rates for similar arrangements. The surcharges are based on the calculated difference between the average revenue per line associated with resold service and the average revenue per line associated with UNE-based service. This calculated difference is in turn based primarily on application of (a) the approved resale discounts set forth in Tariff DTE No. 14, Section 10.5, at 5, and (b) the UNE rates set forth in Tariff DTE No. 17.

Despite the ample notice Verizon MA provided to CTC, CTC failed to migrate its enterprise UNE-P arrangements to resale, nor did it negotiate a commercial agreement with Verizon MA for alternative services, nor did it seek to terminate those arrangements. Accordingly, as of August 23, 2004, Verizon MA began assessing the surcharges on CTC's bills, so that the total composite rates Verizon MA is charging for CTC's former enterprise UNE-P arrangements are equivalent to, and no greater than, the rates CTC would incur if it converted those services to resale.

Verizon MA has not sought to discontinue service to CTC. Instead, Verizon MA has allowed CTC to continue providing service on its existing lines and, generally, to use existing UNE ordering arrangements for disconnects, miscellaneous feature changes, PIC changes, etc. CTC is thus in a considerably better position than it would be if Verizon MA had terminated service to CTC's embedded base of enterprise lines.[6]

---

[6] The surcharges (and the CLECs' continued ability to use UNE ordering arrangements) generally do not apply to *new* enterprise arrangements, such as where CLECs sign up new end users, or add new lines

CTC filed its Complaint in this proceeding on September 24, 2004. The Complaint asserted two arguments. First, CTC alleged that it had a right to purchase UNE-P out of Tariff DTE No. 17.[7] *See* Complaint ¶14 (claiming that, "…CLECs may continue to obtain enterprise UNE-P and four line UNE-P and related services pursuant to this Department-approved and effective tariff.") CTC also asserted that Verizon MA could not assess its surcharges on former enterprise UNE-P arrangements, because Verizon MA had not tariffed those charges and had not submitted "an avoided cost study that conforms to Section 251(d)(3) of the Act…." Complaint ¶ 24. The Complaint makes no mention of any obligation imposed on Verizon MA by Section 271, nor did it seek an order requiring Verizon to file new tariff provisions of any kind.

In its Answer, filed on October 8, 2004, Verizon MA demonstrated, first, that CTC's complaint should be denied because the parties' rights with respect to the availability of enterprise switching are governed solely by the parties' interconnection agreement ("ICA"), and that under Department precedent CTC may not purchase such services out of Tariff DTE No. 17. *See* Answer at 5-6. In that regard, Verizon MA also demonstrated that the ICA specifically defines the circumstances under which CTC may obtain such services *as well as* the circumstances under which Verizon MA has a right not to provide those services. *Id*. at 7. Finally, Verizon MA explained that its surcharge did not need to be tariffed, because, among other reasons, the composite rates resulting from

---

to existing Four-Line Carve-Out arrangements, or request outside moves, or seek to expand the capacity of existing enterprise arrangements. In such cases, CLECs would be required to order resold service using the ordering arrangements and business rules applicable to resale. Thus, the number of situations in which Verizon's surcharges apply will eventually diminish as customers move, change service providers, or migrate off of Verizon's network.

[7] In the words of the Department, Tariff DTE No. 17 is "Verizon's tariff for section 251 UNEs." *Consolidated Order* at 72.

the surcharges were calculated pursuant to Verizon MA's approved resale discount and are equivalent to resale rates, which are already tariffed.

In its March 3 Dismissal Order, the Department appropriately applied its holdings in D.T.E. 98-57-Phase I and found that "CTC's rights, which may have been altered as a result of the FCC's *Triennial Review Order* and *USTA II*, must be resolved according to the terms of the interconnection agreement, not the tariff provisions of M.D.T.E. No. 17." Dismissal Order at 1-2. As further grounds for its decision, the Department also noted that it had "vacated the suspension of Verizon's proposed tariff revisions to withdraw enterprise switching from M.D.T.E. No. 17." *Id*. at 2. Having determined that CTC's rights must be resolved according to the ICA and not the Tariff, the Department then noted that the issue would be resolved as part of the *TRO Arbitration* proceeding, D.T.E. 04-33, to which both parties here are parties. *Id*.

III. ARGUMENT

A. The Department's holding that CTC's rights to enterprise UNE-P must be resolved pursuant to the ICA, not the Tariff, was correct.

CTC argues first that the Department dismissed the Complaint on the mistaken grounds that "CTC is not entitled to relief based upon the terms of Verizon's intrastate tariffs." Motion at 7. CTC, however, offers no coherent argument in support of its bald statement, and the Department's ruling was correct. In dismissing CTC's Complaint, the Department referred to its previous holding that, "tariff provisions, whether derived from arbitration or Department investigations, will not supersede corresponding arbitrated or negotiated provisions in interconnection agreements.…" DTE 98-57, Phase I, Order at 19. (March 24, 2000). As a corollary, the Department also held that a carrier may not purchase services from the Tariff if those services are addressed in an interconnection

agreement: "…Tariff No. 17 represents a supplement to interconnection agreements from which carriers may choose to purchase services *not addressed* in their interconnection agreements." *Id*. at 24 (emphasis added). Because the ICA indisputably addresses the parties' rights with respect to enterprise switching UNEs, *see* Verizon MA's Answer at 6-7, CTC cannot avoid its contractual agreement by purchasing out of Tariff No. 17. Moreover, even if CTC were allowed to buy out of the tariff, it is undisputed that Tariff No. 17 no longer provides for the purchase of enterprise switching, and thus enterprise UNE-P, under Section 251 of the Act.

In the Motion, CTC does not disagree with the Department's application of its Order in DTE 98-57, Phase I. Nor does CTC argue that its ICA does not address the availability of UNE-P. Rather, CTC seems to argue that the ICA is limited in scope solely to Section 251 obligations and therefore cannot govern the rates Verizon MA charges for non-Section 251 "replacement services and their associated surcharges." Motion, ¶ 18. CTC then asserts that "Because there is (or will, after the Agreement is amended to conform to current law) no longer a Section 251 obligation to provide unbundled local switching, the terms for these UNE-P replacement products will not be addressed in D.T.E. 04-33." *Id*., *see also id*. ¶ 20.

Verizon MA, of course, agrees that the scope of the ICA is limited to Section 251 obligations, and it is heartened to hear CTC admit that Section 251 no longer obligates Verizon to provide switching. CTC is wrong, though, to claim that the Department erred in dismissing this case. The Department never ruled that the terms for non-Section 251 elements would be arbitrated in D.T.E. 04-33. The only issue before the Department on CTC's Complaint was whether CTC could purchase *Section 251 UNE-P arrangements* out

of Tariff No. 17. *See* Complaint, opening paragraph, asking the Department to order Verizon MA "to continue to provide [UNE-P] to enterprise customers … on existing rates and terms reflected in its UNE tariffs…." The Department's decision was correct: unbundled access to network elements under Section 251 – the only kind of elements at issue in this case – will indeed be decided in D.T.E. 04-33. The Department made no ruling on whether access to network elements outside of Section 251 would be decided in that arbitration because that was not and is not before it in this case.

In any event, the Department's statements in the Dismissal Order regarding the scope of D.T.E. 04-33 are mere dicta, in that they are not necessary to the reasoning of the decision to dismiss. The Department may or may not address the parties' non-Section 251 rights and responsibilities in D.T.E. 04-33, but either way, CTC *still* cannot purchase Section 251 UNE services "on existing rates and terms reflected in [Verizon's] UNE tariffs." Consequently, even if the Dismissal Order could be read as an erroneous finding that the parties' non-Section 251 rights would be addressed in D.T.E. 04-33, which it cannot, such an error would not justify reinstating CTC's claim.

B. Verizon MA is not required to tariff its surcharges on former UNE-P arrangements. That offering is not made pursuant to Section 271.

1. CTC cannot prevail on its claim that Verizon MA cannot assess the surcharges until they are tariffed.

CTC argues that the Department failed to address the Complaint's assertions that Verizon MA cannot assess its surcharges until and unless Verizon tariffs them under state law, and that the surcharges are too high. Motion at 9. CTC, however, cannot prevail on those claims as a matter of law in any event.

As explained more fully in the Background section, above, and in Verizon MA's Answer, at 10, the surcharges appearing on CTC's bills for its former enterprise UNE-P arrangements bring the total charges up to the level of Verizon MA's resale rates for similar arrangements, based on the Department's approved resale discount. CTC has offered no rationale requiring Verizon MA to submit those rates for specific Departmental approval. Indeed, any charge billed by Verizon MA, such as one for usage, represents a composite of various tariffed rates (in that case, the individual rates for particular forms of calling — *e.g.*, local v. intraLATA toll — and particular amounts of usage within different time-of-day periods). The surcharges at issue here are not off-tariff or non-tariffed rates, but are a billing construct rooted firmly in rates that *are* tariffed.

Verizon MA is only applying the surcharges because CTC failed to convert its enterprise services to lawful arrangements following the delisting of enterprise switching as a UNE. Instead of terminating services to CTC – as Verizon MA had every right to do – the existing serving arrangements were kept in place to avoid disruption to CTC end-user customers. The use of surcharges to bring the rates up to the equivalent of Section 251(c)(4) resale rates is reasonable and appropriate in these circumstances. The surcharges were publicly disclosed — as explained above, they were specifically set forth in letters sent to all of the CLECs to which Verizon MA provides the relevant services in Massachusetts. CLECs can readily check their bills against those publicly disclosed rates. Nor is there any uncertainty about the terms and conditions of the service Verizon MA is providing in cases in which it imposes the surcharges — as explained above, it is the same as the service provided when Verizon MA was offering these serving

arrangements on an unbundled basis. The serving arrangements and the associated surcharges are, moreover, available on a nondiscriminatory basis to all similarly situated customers; that is, to all CLECs that previously served their customers utilizing enterprise switching and associated shared transport, but that failed to make alternate serving arrangements for those customers.

The tariffing of Verizon MA's surcharges cannot be justified by any supposed need for a cost study, as CTC claimed in the Complaint, ¶24. The surcharges are not only based on the approved resale discount but they incorporate a built-in "safety valve." If any CLEC concludes that the surcharges exceed the rate that it could obtain by ordering resold service, then it is free to order such resold service. (Certainly, the CLECs have the ability to determine whether this is the case, since they know what services their customers are using, and they also know — from Verizon MA's tariffs — the retail rates and resale discounts applicable to those services.) Thus, Verizon MA has no ability to impose surcharges that *exceed* resale rates. Any investigation of whether Verizon MA's surcharges result in rates that are just and reasonable or conform to resale rates would thus be a pointless exercise.

In light of these facts, there is no benefit to be gained by requiring Verizon MA to file specific surcharge tariffs. The billing construct at issue here is beneficial to CLECs in that it provides a way for them to continue serving their embedded base of enterprise customers on Verizon MA's network without changing their ordering arrangements, and without limiting the range of retail services they provide. No CLEC is harmed by Verizon MA's continuing service under this alternative. To the contrary, the surcharge default is specifically intended to prevent disruption of CLEC customers' services, even

if the CLEC fails to transition to replacement services. In addition, as noted, CLECs always have the freedom to migrate off Verizon MA's network (by providing VoIP or some other form of intermodal service), or to utilize "actual" resale.

Furthermore, CTC fails to recognize that Verizon MA is not obligated to provide the surcharge default at all. Verizon MA already makes enterprise switching available for resale pursuant to Tariff DTE No. 14. As shown above, Verizon also offered in its May 18, 2004, letters to provide enterprise switching services required by Section 271 pursuant to individually negotiated commercial agreements.

Having thus satisfied its obligations under the Act, if Verizon MA were required to file a tariff, or if CLECs attempted to use a tariff review proceeding as a vehicle to eliminate the surcharges, defer their application, or reduce the total effective rate paid by the CLECs to any level below the resale rates that the Department has already approved, then Verizon MA would be forced to eliminate the surcharge option entirely, to the detriment of the CLECs. Certainly, *limiting* CLEC options would be a perverse result of CTC's purported attempt to ensure "just and reasonable" rates through tariffing.

2. Verizon MA's surcharges are not imposed pursuant to section 271 of the Act.

Most of the Motion is concerned with asserting a new argument, not made in the Complaint, that Verizon MA must tariff its surcharges because the "new service" Verizon MA is "offering" is intended to fulfill Verizon's obligations under Section 271 of the Act. CTC claims that Verizon MA "misled" the Department by stating in a letter to the Department dated January 4, 2005, that "Verizon MA intends to offer enterprise switching and other Section 271 arrangements in the state solely through individually-negotiated contracts based on the particular circumstances, needs and requirements of the

carrier customers," when, according to CTC, Verizon MA imposed surcharges *instead of* negotiating Section 271 arrangements. *See* Motion ¶19, 21. CTC goes on to claim that Verizon MA's surcharges are a new common carrier service and therefore must be tariffed pursuant to Department precedent. *See* Motion ¶¶ 21-24.

The premise of CTC's argument is factually incorrect. Verizon MA's surcharge default was not an offer to serve the CLECs' embedded base of enterprise UNE-P arrangements with a new service, let alone Verizon MA's way of satisfying its Section 271 obligations. Indeed, Verizon MA *has* no obligation to offer UNE-P under Section 271, because Verizon is not required to provide combinations under that section. *See Consolidated Order*, at 55. Nor does Section 271 require Verizon MA to offer services at resale rates, which are the basis for Verizon MA's surcharges. In addition, Verizon MA's surcharges do not apply to new switching arrangements, but are limited to the embedded base of former enterprise UNE-P arrangements. Again, the surcharge offering was not intended nor designed to satisfy any obligations Verizon MA may have to make enterprise switching available under Section 271.

Verizon MA's statement in its January 4, 2005 letter to the Department that it intends to make Section 271 elements available solely through individually-negotiated contracts was and remains true; Verizon MA has made no offer to provide Section 271 services on common rates and terms applicable to all comers. The May 18, 2004, notification letters on which CTC relies so heavily only confirm this fact. Contrary to CTC's claim that Verizon MA will continue to make enterprise switching available "only" pursuant to the surcharges, Motion ¶22, the May 18 letters set forth *three entirely separate means* by which CLECs may purchase such services from Verizon MA.

First, the letters remind the CLECs of the continued availability of resale as an alternative for serving their customers with the elimination of enterprise UNE-P. Second, they state that Verizon is "prepared to enter into commercial negotiations for alternative service arrangements that may offer certain advantages over resale…." *See* Exhibits 1 and 3 to the Complaint, at 2. This is the offering by which Verizon MA intends to satisfy any obligations under Section 271. It does not include a "uniform common carriage rate" and therefore is not subject to tariffing even under the Department's overly expansive view.[8] Third and finally, the letters state that:

> *Should your company fail to migrate its Enterprise UNE-P arrangements to an alternative service* on or before [the cutoff] date, Verizon will begin billing any Enterprise UNE-P arrangements that remain in place after August 22, 2004 at a rate equivalent to the Section 251(c)(4) resale rate for business service … in order to avoid service disruption. The new rate will be effected by means of a surcharge that will be added to the applicable Enterprise UNE-P rates.

Complaint Exhibit 1, at 2 (emphasis added); *see also*, Complaint Exhibit 3 (similar terms). Thus, the surcharges do not *supplant* Verizon MA's Section 271 offering but *supplement* it, for the sole purpose of avoiding disconnection of the embedded-base UNE-P arrangements of recalcitrant CLECs, such as CTC, that fail or refuse either to enter into an individually-negotiated commercial agreement under section 271 or to migrate their UNE-Ps to resale or some other alternative service.

CTC implies that Verizon MA's offer to negotiate individual agreements in response to Section 271 is some kind of fabrication, simply because "CTC and Verizon have not entered into an individually negotiated contract – or *any* type of contract – for a

---

[8] "Where the service is offered through individually negotiated contracts, and no uniform common carriage rate is made generally available, then no obligation to file a uniform tariff may arise." *Order Denying Motion of Verizon Massachusetts for Partial Reconsideration*, D.T.E. 03-59-B, at 9.

UNE-P replacement product." Motion, ¶22 (emphasis in original). But CTC's failure to negotiate such an agreement provides no basis to conclude that Verizon MA's offer is not *bona fide*. Indeed, other CLECs have entered into such agreements with Verizon MA.

In any event, the material consideration here is that Verizon MA's surcharges are not a new service offered to fulfill any Section 271 obligation, as is clear from Verizon's notices, and Verizon MA is free to do away with the surcharge option and the associated services at any time. Moreover, Verizon MA has offered to provide Section 271 enterprise switching services solely through individually-negotiated contracts, not at common carriage, and has no obligation to tariff that offer.

IV. CONCLUSION

For the above reasons, the Department should deny CTC's Motion for Reconsideration.

Respectfully submitted,

VERIZON MASSACHUSETTS

By its attorneys,

/s/Alexander W. Moore
Bruce P. Beausejour
Alexander W. Moore
185 Franklin Street, 13th Floor
Boston, MA 02110-1585
(617) 743-2265

Dated: April 11, 2005